

Objection Deadline: November 10, 2011 at 4:00 p.m. (Eastern)
Hearing Date and Time: December 6, 2011 at 10:00 a.m. (Eastern)

ALSTON & BIRD LLP
Michael Johnson, Esq.
90 Park Avenue
New York, N.Y. 10016
Telephone: (212) 210-9400
Facsimile: (212) 210-9444

and

John C. Weitnauer, Esq.
1201 West Peachtree Street
Atlanta, Georgia 30309
Telephone: (404) 881-7000
Fax: (404) 881-7777

Counsel to SunTrust Bank

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

In re:

LEHMAN BROTHERS HOLDINGS INC., *et al.*,

Debtors.

Chapter 11
Case No. 08-13555 (JMP)
(Jointly Administered)

**OBJECTION OF SUNTRUST BANK TO
(I) DEBTORS' PLAN SUPPLEMENT TO THIRD
AMENDED JOINT CHAPTER 11 PLAN AND
(II) NOTICE OF PROPOSED ASSUMPTION
OF EXECUTORY CONTRACTS**

SunTrust Bank ("**SunTrust**") files this Objection to (i) the Plan Supplement [ECF 21254] (the "**Plan Supplement**") to the Third Amended Joint Chapter 11 Plan [ECF No. 19627] (the "**Modified Plan**"), filed by Lehman Brothers Holdings Inc. and its affiliated Debtors ("**Debtors**") and (ii) the Notice of Proposed Assumption of Executory Contracts and Unexpired

Leases Pursuant to Debtors' Third Amended Joint Chapter 11 Joint Plan Pursuant to Section 1121 of the Bankruptcy Code which was received by SunTrust (the "Notice"). In support of its objection, SunTrust states:

1. Prior to Lehman Brothers Special Financing Inc.'s ("LBSF") bankruptcy petition, SunTrust was party to a certain ISDA Master Agreement, dated as of April 30, 1996, as amended June 10, 2004 and July 19, 2006, pursuant to which LBSF and SunTrust entered into various swaps (the "**SunTrust – LBSF Swaps**"). All of the SunTrust – LBSF Swaps were terminated prior to LBSF's bankruptcy filing.

2. SunTrust and LBSF have been engaged in mediation, pursuant to prior orders of this Court, regarding the amount of termination payments owed by either party to the other. To SunTrust's knowledge, LBSF has never challenged the validity or effectiveness of the termination of the SunTrust – LBSF Swaps.

3. On August 31, 2011, the Debtors filed the Modified Plan.

4. On October 25, 2011, the Debtors filed a Plan Supplement, which included Exhibit 2, Part A - Schedule of Derivatives Contracts. Exhibit 2, Part A of the Plan Supplement states that "[u]nless a specific derivatives contract is noted for a specific counterparty, the Debtors intend to assume all derivatives contracts with each counterparty set forth on Exhibit 2, Part A."

5. Exhibit 2, Part A of the Plan Supplement lists SunTrust as a "counterparty." Exhibit 2, Part A of the Plan Supplement does not note any specific derivatives contract with SunTrust.

6. In addition, SunTrust received the Notice, in which the Debtors stated that they “currently propose to assume the executory contracts ... listed on Exhibit A.” Exhibit A to the Notice lists SunTrust as the “counterparty” and LBSF as the applicable debtor, but does not list any specific contract. Exhibit A further states that “[u]nless a specific derivatives contract is noted, the Debtors intend to assume all derivatives contracts with you.”

7. Based on Exhibit 2, Part A of the Plan Supplement and Exhibit A to the Notice, the Debtors intend to assume all of the SunTrust – LBSF Swaps in connection with confirmation of the Plan.

8. Because all of the SunTrust – LBSF Swaps have been terminated, there are no remaining obligations under them. Accordingly, the SunTrust – LBSF Swaps are no longer executory and cannot be assumed. *See In re Sanshoe Worldwide Corp.*, 993 F.2d 300 (2d Cir. 1993); *In re 611 Sixth Avenue Corp.*, 191 B.R. 295, 301 (Bankr. S.D.N.Y. 1996); *Moody v. Amoco Oil Co.*, 734 F.2d 1200 (7th Cir. 1984).

9. To the extent the Court should determine that the SunTrust - LBSF Swaps are assumable by LBSF, SunTrust reserves the right to seek full cure and compensation pursuant to section 365 of the Bankruptcy Code. SunTrust believes that, had the SunTrust – LBSF Swaps not been terminated, LBSF may have become obligated to make payments to SunTrust under same over the last 3 years. Because the parties have always treated the SunTrust – LBSF Swaps as validly terminated, SunTrust has not undertaken the work that would be required to determine a theoretical cure amount.

WHEREFORE, SunTrust respectfully requests that the Court enter an Order (i) requiring the deletion of the SunTrust - LBSF Swaps from Exhibit 2, Part A of Plan Supplement; (ii)

denying the relief sought by the Notice regarding the SunTrust – LBSF Swaps, or in the alternative, (iii) setting a hearing date to consider the matters raised by the Notice after a reasonable period has been established for the parties to conduct discovery regarding all issues raised by the Notice, including the calculation of cure amounts, and (iv) granting such other relief as is appropriate and just.

Dated: New York, New York
November 10, 2011

Respectfully submitted,

/s/ Michael Johnson

Michael Johnson, Esq.
90 Park Avenue
New York, N.Y. 10016
Telephone: (212) 210-9400
Facsimile: (212) 210-9444

and

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